

401 KAR 5:060. KPDES application requirements.

RELATES TO: KRS 224.01-010, 224.01-400, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-050, 224.70-110, 40 C.F.R. 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471, 33 U.S.C. 1251-1387, 42 U.S.C. 300h, 6901-7000, 11023

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387 subject to the conditions established in 33 U.S.C. 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes the application requirements for a KPDES permit and contains additional requirements for general and specific categories of dischargers.

Section 1. Definitions. Definitions established in [40 C.F.R. 122.2](#) shall apply for the interpretation of the federal regulations cited within this administrative regulation.

Section 2. Applying for a KPDES Permit. (1) Application requirements. A person who is required to have a permit, including a new applicant or permittee with an expiring permit, shall complete, sign, and submit an application to the cabinet as established in this administrative regulation and [401 KAR 5:055](#).

(2) Duty to apply.

(a)1. A person who discharges or proposes to discharge pollutants and who does not have an effective permit shall submit a complete application to the cabinet in accordance with this section, unless excluded as established in clauses a. through c. of this subparagraph.

a. A person covered pursuant to general permits as established in [40 C.F.R. 122.28, effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70483, November 20, 2008](#).

b. A person discharging to a POTW as established in [40 C.F.R. 122.3](#), effective July 1, 2008 unless the cabinet requires an individual permit pursuant to [40 C.F.R. 122.44\(m\)](#), effective July 1, 2008.

c. A user of a privately owned treatment works, unless the cabinet requires an individual permit pursuant to [40 C.F.R. 122.44\(m\)](#), effective July 1, 2008.

2. The application shall include a BMP program if necessary pursuant to [40 C.F.R. 122.44\(k\)](#), effective July 1, 2008.

(b) An applicant shall submit the appropriate application form, as established in Table 1. of this paragraph.

TABLE 1	
Discharge Type	Required Application Form
POTW	1 and A
CAFO	1 and B
Aquatic Animal Production Facility	1 and B
Manufacturing, commercial, mining and silvicultural discharges with process water	1 and C
Manufacturing, commercial, mining and silvicultural discharges with nonprocess wastewater only	1 and SC
Industrial stormwater point source discharges	1 and F

(3) Additional requirements for KPDES applications shall be as established in [40 C.F.R. 122.21, effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70481-70483, November 20, 2008](#) and the modifications, exceptions, and additions of Section 11 of this administrative regulation.

(4) Continuation of expiring permits shall be as established in [40 C.F.R. 122.6](#), effective July 1, 2008.

(5) An animal feeding operation may submit Form NDCAFO to satisfy the voluntary certification of no-discharge pursuant to [40 C.F.R. 122.23\(i\), effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70481-70483, November 20, 2008](#).

Section 3. Service of Process. (1) Each applicant and permittee shall provide the cabinet with an address for receipt of any legal document for service of process.

(2) The last address provided to the cabinet pursuant to this provision shall be the address at which the cabinet shall tender any legal notice.

Section 4. Signatories to Permit Applications and Reports. Signatories to permit applications and reports shall be as established in [40 C.F.R. 122.22](#), effective July 1, 2008.

Section 5. Concentrated Animal Feeding Operations. (1) Additional permit application and special KPDES program requirements shall be as established in [40 C.F.R. 122.23, effective July 1, 2008, as amended in the Federal Register, Volume 73, Number 225 P70480-70483, November 20, 2008](#).

(2) The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit if a CAFO obtains coverage under a general permit in accordance with [40 C.F.R. 122.23\(h\)](#) and [40 C.F.R. 122.28](#) is not a cause for modification pursuant to the requirements of [401 KAR 5:070](#), Section 6, or [40 C.F.R. 122.62, as amended in the Federal Register, Volume 73, Number 225 P70485, November 20, 2008](#).

(3) The incorporation of changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements established in [40 C.F.R. 122.42\(e\)\(6\), as amended in the Federal Register, Volume 73, Number 225 P70484, November 20, 2008](#) shall be a minor modification as established in [40 C.F.R. 122.63, as amended in the Federal Register, Volume 73, Number 225 P70485, November 20, 2008](#).

Section 6. Concentrated Aquatic Animal Production Facilities. A concentrated aquatic animal production facility shall be a point source subject to the KPDES permit program and shall be subject to permit application and special KPDES program requirements established in [40 C.F.R. 122.24](#), effective July 1, 2008.

Section 7. Concentrated Aquatic Animal Projects. A discharge into an aquatic animal project shall be a point source subject to the KPDES permit program and the requirements established in [40 C.F.R. 122.25](#), effective July 1, 2008.

Section 8. Storm Water Discharges. A point source discharge of storm water shall be subject to the KPDES permit program and the requirements established in [40 C.F.R. 122.26](#), effective July 1, 2008.

Section 9. Silvicultural Activities. A silvicultural point source shall be a point source subject to the KPDES permit program and the requirements established in [40 C.F.R. 122.27](#), effective July 1, 2008.

Section 10. Regulated Small MS4. (1) The objective of regulating a small MS4 shall be as established in [40 C.F.R. 122.30](#), effective July 1, 2008.

(2) The operator of a small MS4 shall be subject to regulation as established in [40 C.F.R. 122.32](#), effective July 1, 2008.

(3) The application requirements for a small MS4 shall be as established in [40 C.F.R. 122.33](#), effective July 1, 2008.

(4) The permit for a small MS4 shall contain the conditions established in [40 C.F.R. 122.34](#), effective July 1, 2008.

(5) A small MS4 may share responsibilities to implement minimum control measures as established in [40 C.F.R. 122.35](#), effective July 1, 2008.

Section 11. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in Sections 1 through 10 of this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" if the authority to administer federal regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to the cabinet.

(3) "KPDES" shall be substituted for "NPDES" if the authority to administer federal regulations cited in Sections 1 through 10 of this administrative regulation has been delegated to the cabinet.

(4) The forms required in Section 2(2)(b) of this administrative regulation shall be substituted for the federal forms established in [40 C.F.R. 122.21](#), effective July 1, 2008.

(5)(a) The conditions for Cooling Water Phase II established in [40 C.F.R. 122.21\(r\)\(1\)\(ii\)](#) shall be modified to remove the references to [40 C.F.R. 125.95](#), effective July 1, 2008.

(6) The special procedures related to thermal variances cited as 40 C.F.R. Section 124.65 in [40 C.F.R. 122.21\(m\)\(6\)](#) shall be modified to [40 C.F.R. 124.62](#), effective July 1, 2008.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) KPDES Form 1, DEP 7032, February 2009;
- (b) KPDES Form A, DEP 7032A, February 2009;
- (c) KPDES Form B, DEP 7032B, February 2009;
- (d) KPDES Form C, DEP 7032C, February 2009;
- (e) KPDES Form SC, DEP 7032SC, February 2009;
- (f) KPDES Form F, DEP 7032F, February 2009;
- (g) KPDES Form NE, DEP 7032NE, February 2009; and
- (h) KPDES Form NDCAFO, DEP 7032NDCAFO, February 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through

Friday, 8 a.m. to 4:30 p.m. (9 Ky.R. 858; Am. 1119; 10 Ky.R. 25; eff. 6-1-83; 11 Ky.R. 756; eff. 1-7-85; 12 Ky.R. 528; eff. 12-10-85; 20 Ky.R. 3246; 21 Ky.R. 396; eff. 8-24-94; 28 Ky.R. 2686; 29 Ky.R. 1053; 1566; eff. 12-18-02; TAm eff. 8-9-2007; 35 Ky.R. 2526; eff. 9-25-2009.)